

MAR 15 2021

Nathan Ochsner, Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ELIJAH BURKE SWALLOW,
TDCJ# 2100152,
Plaintiff,

v.

SHERIFF ED GONZALEZ, et al.,
Defendants.

X
X
X
X Civil Action No.
X
X
X H-20-2232
X
X
X
X
X
X

PLAINTIFF'S MORE DEFINITE STATEMENT

COMES NOW, Elijah Burke Swallow, Pro Se Plaintiff submitted his More Definite Statement as requested by this Court as followed to ensure Fair and Justice is provided under the Law of 42 U.S.C. § 1983 allow accordingly to said Prisoner's Civil Rights Complaint.

Questions

1. Provide the date that you were admitted to TDCJ

most recently. If you do not know the exact date in response to any question posed in this order, provide an approximate date (month/year).

I've been incarcerated since October 22, 2014 and was sentenced to The Texas Department of Criminal Justice on or about the day of December 2, 2016. I was Bench Warrant to Harris County from T.D.C.J. on or about the day of September 11, 2018 and returned back into T.D.C.J. on October 25, 2019.

"I swear under penalty of perjury that these answers are true and correct to the best of my knowledge."

2) Provide the dates of any previous admissions to TDCJ, if any, and the dates of your release.

I return to T.D.C.J. on October 25, 2019 (as stated within question one) and my eligible Parole Review Date is April 22, 2022 and my Discharged Date is October 21, 2029.

"I swear under penalty of perjury that these answers are true and correct to the best of my knowledge".

3) Your complaint concerns an incident that occurred when you were in custody at the Harris County Jail (the "Jail") in 2018. Answer the following questions about your confinement in the Jail in 2018:

(a) What charges were pending against you in 2018? Please explain and, if possible, provide the case number and the court where those charges are pending.

1) Aggravated Robbery;

"Which I participate as a Law of Party, because I was present on scene and helped watch out while my co-defendants committed the act."

Case No. 1449178901010

Court No. 179th Judicial District Court of Harris County.

(b) When were you arrested and admitted to the jail on these charges?

I was never arrested on these charges which I became convicted of on or about the day of 2019. I was arrested on different charges in a different County back in October 22, 2014. Which a few month later (Harris County) issue a warrant for my arrest regarding these charges.

(c) At the time of your arrest, were you on probation or parole for a previous conviction? If so, please explain.

No, not that I can remember

(d) Were you convicted of these charges? If so, provide the date that you were convicted and the sentence that you received.

Yes, I was convicted of Aggravated Robbery; exacted date which I was convicted on this charge (cant remember) but was in 2019. I recieved 13 years

○ (e) If you were convicted of these charges, please provide the date that you were transferred from the Jail to T.D.C.J.

(I believe the the month was November date approximately 15 (unsure exactly) year '2019.

"I swear under penalty of perjury that these answers are true and correct to the best of my knowledge."

○ 4) You indicate in your Complaint that you were sexually assaulted by another inmate at the Jail in October of 2018. Answer the following questions about this allegation:

(a) Provide the exact date that the assault occurred

I'm unable to remember the (exact date) which I endure the most (Life Changing Event) that completely destroy my life forever.

○ (b) Provide the name of the offender who assaulted you. If you do not know the offender's full name, describe him as much as possible (provide physical description, height, weight, race, age.)



- "Physical Description" (Well builded muscle, but is an older man in age)
"Height" (approximately) 5' 11" - between - 6' 2"
"Weight (approxianstely) 190 lb - 220 lb,
"Race" Black
"Age" (approximately) 50 - 65 years of age.

(c) State whether the offender who assaulted you was assigned to your cell or if he was just present on your cell block.

- Yes, the offender was assigned to my cell block and approximately several doors away,

(d) Describe with detail how you were assaulted by this offender.

- "This offender came into my cell; when I was laying down in my bed reading a book and begin stroking his penis until full detail of his length, after during such act. I asked the offender to (STOP) and go back to his cell and do that stuff, because I was not into him or his kind and especially not his age group. My attack then stated, "He have had enough of my avoiding him and it was time whether
6.

- I liked it or not, It's going to happen. My attacker then walked very fast without his clothes to my bed and "Told me to shut up and not scream, because I might not make it out of this alive". After such statement was made, my only choose was to do the unthinkable. My attacker then proceed by taking my bed cover away my body and put his had down my pants and begin caress my penis which didn't come to life so he started touching my anus with one finger while still stroking his penis until his pleasure was completed. Never did my attacker penetrate my anus.

(e) State where the assault occurred (what area of the Jail) and fully describe the situation immediately before the assault occurred.

The assault occurred in the area of (Dol) Jail of Harris County Jail.

- I was allowed out of my cell by the overnight officer to assist another offender who normally clean the dorm on a daily basis. So I begin helping clean the dorm after cleaning the dorm before all other offenders wake-up and

begin their daily activities. After that we was allowed to take a shower one-by-one and ~~eg~~ either go back into our cell or watch TV until the light's come on as schedule by Harris County Dayroom Policies.

(f) Describe in detail what injuries you sustained, if any, as a result of the assault.

No, Physical Injuries, just Emotional and mental and I guess you can say Physical Distress, as a result of being taking advantage of.

(g) If you were injured, state what medical treatment have you recieved for your injuries to date?

I have only received counseling, provide by some PREA Department within Harris County Outside Resource Group.

(h) Were you hospitalized? If so, for how long?

I believe approximately 24 hours

(i) What is your medical condition now?

Stable, but still under mental Distress.
8.

"I swear under penalty of perjury that these answers are true and correct to the best of my knowledge".

5) Before the assault that occurred in October 2018, did you receive any threats from the inmate who assaulted you? If so, fully explain what threats were made to you by the inmate who assaulted you as alleged in your complaint.

No, Threats was ever made; He only stated to me that I act like his son.

"I swear under penalty of perjury that these answers are true and correct to the best of my knowledge."

6) For each threat that was made against you by this inmate, if any, answer the following:

(a) When was each threat made? Give specific dates.

N/A

(b) Did you complain^{ES} about this threat? If so, did you complain orally or in writing?

N/A

(c) If you complained orally about these threats, identify by name the official(s) to whom you complained and provide the specific date for each complaint that you made

N/A

(d) What response to your oral complaints did you receive?

N/A

(e) If you complained in writing about the threats, state whether you filed a grievance or some other form of written complaint and provide a specific date for each written complaint or grievance that you filed.

[Date unknown] N/A (I wrote a grievance after the assault happened and nobody was held accountable for the action).

(f) What response to your written complaints did you receive?

There no evidence to sustain your claim (or) something like that. "I swear under penalty of perjury that these answers are true and correct to the best of my knowledge".

2) Provide the date that you contacted the Harris County Sheriff's PREA Unit about the offender who assaulted you and state what, if any, investigation was done.

○ The date (I can't remember specific) due to the Facts it's been so long and so much counseling has taught me to forget about the event and think of something else.

Yes, an investigation was so called conducted, but (NO EVIDENCE) or (NO OFFENDER) wanted to become involved in said investigation.

"I swear under penalty of perjury that these answers are true and correct to the best of my knowledge!"

○ 8) Do you claim that the Harris County Sheriff's PREA Unit failed to conduct an adequate investigation? If so, fully explain what you mean by this.

Yes, I feel my assault was treated as another careless case, because I didn't have the proper support to stay on Harris County phone lines. And I also truly feel that since nobody wanted to be listed as a witness to my claim of abuse; it became a Cold Case to continually look into. It also fell on H.C.S.O. for failing to install cameras into all dorms as the law requires under H.C.S.O.

○ protocols to protect all individuals from unsafe hazards.
"I swear under penalty of perjury that these answers are true and correct to the best of my knowledge."

9) Your complaint lists Sheriff Ed Gonzalez and the John Doe Official as the defendants you hold responsible for your injuries. Describe with detail the alleged personal involvement of Sheriff Gonzalez and the John Doe Official in the assault that forms the basis of your Complaint. List each defendant separately and state what he did ~~do~~^{as} (or did not do) that you believe was wrong. Be specific as to any personal involvement.

John Doe Official: Shall be held responsible for his act of (Failing To Report The Sexual Assault) ~~after~~ after my person; explain what happen that day and who the offender was that cause the unforgettable abuse against my will. Officer John Doe, neglect my report and instead enhance my chance's of being sexually assault again (but this time more violence) then before which could have resulted in my death, because the Official overseeing the dorm at the time I made my report of a (cry out) for Help. John Doe Official did not follow the protocols or policies which is listed within the Inmate Handbook, Harris County Sheriff's Office; (Revision Date (August 2015)) accordingly, to the message from The Sheriff Number 3) Avoid disputes with other inmates. Notify a Deputy, Detention Officer, or Staff Member at once if you get into a dispute with

○ another inmate or if an inmate has threatened, assaulted, or victimized you in anyway. Therefore, instead of the officer reporting to his Supervisor regarding the alleged sexual abuse against offender unto an offender. The officer in this matter did listen to my allegation, but encourage more abuse to continual because he failed to remove me immediately and secure any evidence from being destroyed or clean.

○ Sheriff Ed Gonzalez: Is personal involved, because it's his ²⁵responsib. responsible to monitor the daily operations of the County Jail as well as the Sheriff's Department; which included his approval of all procedure conducted on a daily basis that ensure adequate security measures are in place and all safety for each offender is okay.

○ Sheriff Ed Gonzalez: May not have made the personal decision to place me into that dorm, But Sheriff Ed Gonzalez have the access and authority to obvious and Blatant Circumstance of the Computer system through Records of all decision concerning each inmate safety and risk of the Classification Department. And by Facts of all records installed through the High Tech system

- surrounding H.C.S.G. Foundation, there's NO EXCUSE to why the system control by the Sheriff's Office didn't immediately show Red Flag's all across the Computer that my housing was a substantial risk of serious harm. The H.C.S.G. Classification Department Members knew of my past criminal history and sexual abuse dump unto me at Jefferson County Jail, but still disregarded it, which I believe brought yet another vicious act against my human dignity. Whereas, Sheriff Ed Gonzalez can not stated under no circumstance he did not cause such risk which I experience under the authority of his custody. By Facts of Knowledge automatic, make you guilty of creating Excessive Risk against my person, therefore under the law, Sheriff Ed Gonzalez is indeed liable for any action cause to me.

This is the reason I hold Sheriff Ed Gonzalez personal involved in this matter.

- Whereas, at the time of my housing at Harris County Sheriff's Office, I was Consider to be a Pre-Detenter and under that Law require more protective guideline than those already convicted. Therefore, Inasmuch as being subject to violently ass-

culted in prison, County Jail or any other etc. being sexually abuse by anyone is simply not apart of the penalty that criminal offenders pay for their offense
→ against society, prison officials have a duty to protect inmates from violence at the hands of other inmate

Therefore, Sheriff Ed Gonzalez failed to ensure that my safety was secured from any harm while being housed from a Bench Warrant from T.D.C.S.

"I swear under penalty of perjury that these answers are true and correct to the best of my knowledge".

10) You state in your complaint that Sheriff Gonzalez knew that you were a "member of the LGBT community" and that you had been sexually abused in another facility in 2015. Explain with detail how you know that Sheriff Gonzalez personally had this knowledge before you were assaulted in 2018.

Under all personal and serious information active into the H.C.S.O. Classification Records by any Classification Department Official, stated
15.

that all information is copied and send to the head office and Sheriff database to be reviewed for safety procedures of all offenders and officers and secure / security.

As, the Sheriff of the County Jail and Harris County Community, it is his responsibilities to ~~make~~^{ess} monitor and ensure that all decision ~~at~~^{ess} are final as a matter of means regarding the prison personnel decisions. Therefore, any decision made by any official under Sheriff Ed Gonzalez operation recieved final approval of his authority to proceed as followed. Therefore to claim (No knowledge) of the abuse; is an excuse to involved responsibilities for his action.

"I swear under penalty of perjury that these answers are true and correct to the best of my knowledge."

11) Explain with detail the sexual abuse you suffered in 2015, including the name of the facility where it ~~at~~^{ess} occurred and the identity of the perpetrator who abused you. Also, state whether you reported the abuse and, if you did, provide the name of the official who you reported it to and the result, if any, of your report.

○ I was sexually abuse by a High Rank Lieutenant Guittierrez of Jefferson County Correctional Facility.

I reported my claim to the PREA Hotline after breaking my silence weeks later who contact PREA Officer Lt. Welona Williams and Former Capt. Eiselstein

○ I was placed on a Suicide Watch by my attacker Lt. Guittierrez and then Hog Tie. Once hog tie Lt. Guittierrez advise his officers to waited out in the Hall to form a report to how they would write the incident regarding my case. While officer are outside of my cell discussing their case. Lt. Guittierrez head down and play a pressure point against my jaw's to keep me from screaming or making any sound while he place his hand under my suicide gownl and rub my inner thigh close to my penis "Stating it will get worse if I keep causing trouble in this Jail and guess what my staff will back me, and If you tell anyone about this matter I will look into the database an go after your family to protected mine". A investigation was conducted and found no such allegation because officer denied.

○ "I swear under penalty of perjury that these answers are true and correct to the best of my knowledge."

12) You reference a state court case (2019-22593), pending in the 125th District Court for Harris County. Please answer the following questions about this lawsuit:

(a) Provide the names of the defendants in this state court case.

Ed Gonzalez, John Doe (Official), and John Doe (Offender/perpetrator)

(b) List all of the claims you have raised against the defendants in this state court case.

- 1) Failure To Protect From Violate Abuse
- 2) Neglect For Allow An Inmate To Abuse Another Offender
- 3) Failure To Report Sexual Assault
- 4) Failure To Ensure Policies was Enforce Regards To Your (Zero Tolerance) Laws

(c) When did you file this lawsuit?

March 29, 2019

(d) Is this lawsuit related in any way to the October 2018 assault at the Jail that forms the basis of your Complaint in this case? If so, please explain.

Yes, this claim is exactly the same as my lawsuit issued within this claim.

Before, filing either claim regarding this Cause of Action; I have been reading a Jailhouse Lawyer's Handbook issued by Center for Constitutional Rights, presents that I should follow all legal options as a protection to my claim under the laws of Texas. Therefore, I made a decision to use all my options as a protection of my Civil Rights.

(e) If you know, what is the status of this state court case?

unknown, since the Docket Control Order by Judge Kyle Carter, schedule pre-trial 01/31/2020 and Trial Date: 02/10/2020

"I swear under penalty of perjury that these answers are true and correct to the best of my knowledge."

13) What is your date of birth?

April 22, 1992

"I swear under penalty of perjury that these answers are true and correct to the best of my knowledge."

Q14) State, in complete form, all names you have ever used or been known by, including any and all aliases. Separately list any and all names you have used for any lawsuit you have ever filed

N/A only nickname Q-Daddy

"I swear under penalty of perjury that these answers are true and correct to the best of my knowledge."

Q15) If possible, list all prison identification numbers you have ever been assigned and all other jail and state or federal prison numbers ever assigned to you (for example, county jail SPN numbers, federal prison register numbers, etc.) For all number listed, identify the particular institution that assigned the number.

#02756621 (Harris County Sheriff's Office)
#02932666 (Jefferson County Sheriff's Department)
#01706648 (Texas Department of Criminal Justice)
#02100152 (Texas Department of Criminal Justice)
#(Can't Remember) (Orange County Jail)
#(Can't Remember) (Texas Youth Commission)

Q16) "I swear under penalty of perjury that these answers are true and correct to the best of my knowledge."

16. List all of the offenses for which you have been convicted previously and the dates those convictions were entered.

Simple Robbery convicted on 11/14/2016
(Jefferson County Correctional Facility)

Simple Robbery convicted on 07/21/2017
(Orange County Correctional Facility)

Aggravated Robbery with Deadly Weapon 10/25/2019
(Harris County Sheriff's Office.)

"I swear under penalty of perjury that these answers are true and correct to the best of my knowledge"

Plaintiff Elijah Burke Swallow, submitted his final Plaintiff's More Definite Statement, order by this Court completed an successful evaluation before issuing a summons regarding the allege claim as set forward.

Executed On: December 28, 2020 Elijah Swallow

Cause No. 201922593

SWALLOW, ELIJAH BURKE

vs.

GONZALEZ, ED

* IN THE DISTRICT COURT OF
*
* HARRIS COUNTY, TEXAS
*
* 125th JUDICIAL DISTRICT

SETTING REMINDER

To All Counsel and Pro Se Parties:

This is a reminder of the following setting(s):

- ☐ Status Conference on
- ☐ Pretrial Conference on **at 09:00 AM**
- ☒ Docket Call on **1/31/2020 at 09:00 AM**
- ☒ Trial for the two week period beginning **2/10/2020**

If you do not appear, the court will sign an order of DISMISSAL FOR WANT OF PROSECUTION or other appropriate order.

If you have any questions regarding this notice, please contact the Court coordinator, MELISSA TORRES at (832) 927-2553.

Thank you for your prompt attention to this matter.

KYLE CARTER
JUDGE, 125TH DISTRICT COURT
DATE GENERATED: 12/11/2019

Lijah Burke Swallow #2100152
Postfield Unit

261 FM 2054
Pineville Colony, Texas 75884

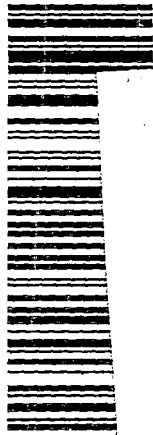
United States Courts
Southern District of Texas
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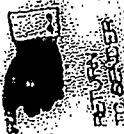
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